

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA**

<b>UNITED STATES OF AMERICA,</b>	)	<b>CASE NO. 8:01CR272</b>
	)	
<b>Plaintiff,</b>	)	
	)	
<b>vs.</b>	)	<b>ORDER</b>
	)	
<b>CURTIS ANTHONY HOLMES,</b>	)	
	)	
<b>Defendant.</b>	)	

This matter is before the Court on the motion for appointment (Filing No. 397) filed by Donald B. Fiedler, counsel for the Defendant, Curtis Anthony Holmes.

Fiedler served as retained counsel for Holmes beginning on November 28, 2001. Fiedler represents that he provided continued legal services for Holmes in anticipation of the filing of a motion pursuant to Federal Rule of Criminal Procedure 35. A Rule 35 motion was filed on June 21, 2004. (Filing No. 374.) The motion was heard on September 10, 2004. The subsequent Amended Judgment was filed on the same date. (Filing No. 385.) In his motion filed on August 9, 2005, Fiedler moved for appointment nunc pro tunc for the period from December 17, 2003, through January 6, 2005 because his client is without funds to pay for the services provided with respect to the Rule 35 hearing.

The Eighth Circuit has not addressed this issue. Other courts have declined to appoint retained counsel under the Criminal Justice Act, nunc pro tunc, when the defendant lacks funds to pay retained counsel. *See, e.g., United States v. Calle*, 178 F. Supp. 2d 309 (E.D. N.Y. 2001); *United States v. Alexander*, 742 F. Supp. 54 (N.D.N.Y. 1990); *United States v. James*, 301 F. Supp. 107 (W.D. Tex. 1969). . I have found no authority to allow for the requested appointment, nor has any authority been supplied by counsel.

IT IS ORDERED that the motion for appointment (Filing No. 397) filed by Donald B. Fiedler, counsel for the Defendant, Curtis Anthony Holmes is denied.

Dated this 22<sup>nd</sup> day of August, 2005.

BY THE COURT:

s/Laurie Smith Camp  
United States District Judge